APPEAL NO. 93139

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1993). On January 21, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant (claimant) did not dispute the first impairment rating he received within 90 days and therefore that impairment rating of seven percent became final. Claimant asserts that the doctor who gave him that rating was chosen by the carrier, and he should be evaluated by a doctor chosen by the Texas Workers' Compensation Commission (Commission) notwithstanding that he unknowingly did not follow Commission rules. The respondent (carrier) replies that a timely dispute of the rating was not made, and the decision should be affirmed.

DECISION

Finding that the decision is not against the great weight and preponderance of the evidence, we affirm.

Claimant's testimony was not extensive. Parts of his medical records in evidence indicated that he worked for (employer) as an equipment mechanic when he strained his back while using a pry bar on (date of injury). Claimant testified that he had worked there for eight months at that time. After the injury, he states he was sent to a medical clinic where he saw Dr. B (Dr. Be) twice, who then referred him to Dr. B (Dr. B) in December 1991. Claimant saw Dr. B through July 14, 1992, with Dr. B finding that he had reached maximum medical improvement (MMI) with a seven percent impairment rating on June 16, 1992. Claimant acknowledged that Dr. B told him on June 16, 1992 that he was assessing his impairment at seven percent. No document in evidence shows that claimant disputed this initial impairment rating. Claimant's testimony is consistent with the absence of evidence of a dispute; he states that he did not dispute the seven percent that Dr. B gave him because he was unfamiliar with the rule.

The seven percent impairment rating that Dr. B gave the claimant was set forth on a TWCC form 69 which showed MMI on June 16, 1992. Claimant's appeal indicates that Dr. B was chosen by the carrier. The evidence shows that claimant was sent to a clinic after the injury, and a doctor at that clinic referred the claimant to Dr. B. Claimant saw Dr. B on 10 occasions in eight months so the question of who chose Dr. B does not rule out the claimant, since claimant stayed with him for over 60 days. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE 126.7(f) (Rule 126.7(f)). The claimant then chose Dr. Neustein (Dr. N), who he saw from July 29 to October 14, 1992. On September 24, 1992, Dr. N said the claimant reached MMI with a 5 percent impairment rating. On October 14, 1992, Dr. N noted, "[t]he patient is being referred to a chiropractor." (At the hearing there was an issue as to payment for the chiropractor; since no issue was raised on appeal, we will not comment concerning payment for these services.)

The hearing officer found that claimant did not dispute his initial impairment rating within

90 days and concluded that the initial rating of 7 percent was correct. The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. While the hearing officer made no finding of fact as to when the initial rating was assigned, we can infer a finding that it was assigned on June 16, 1992, when claimant testified he was told of that rating by Dr. B. There is no evidence that the claimant disputed the 7 percent rating on or before September 14, 1992 so the hearing officer's finding that claimant did not dispute the rating within 90 days is not against the great weight and preponderance of the evidence. Rule 130.5(e) states that the initial impairment rating is considered final if not disputed within 90 days.

Since Rule 130.5(e) contains no conditions, such as good cause, the hearing officer, in this case, could conclude on the basis of her finding and the rule itself that the 7 percent rating was correct. Even if there were a good cause provision, ignorance of the law does not constitute good cause. *See* Petroleum Casualty Co. v. Canales, 499 S.W.2d 734 (Tex. Civ. App.-Houston [1st Dist] 1973, writ ref'd n.r.e.) and Applegate v. Home Indemnity Co., 705 S.W.2d 157 (Tex. App.- Texarkana 1985, writ dismissed). The effect of ignorance of the law can also be applied to commission rules because valid rules have the force and effect of law. *See* Sears v. Texas State Board of Dental Exam, 759 S.W.2d 748 (Tex. App.-Austin 1988, no writ).

The decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge